RECENT CASES

ADMIRALTY — PRACTICE — RIGHT TO WITHDRAW SUIT AFTER DEFENDANT HAS PETITIONED FOR LIMITATION OF LIABILITY. — The claimant brought suit for the loss of her baggage on the "Titanic." The defendant filed a petition for limitation of liability under a United States statute. The claimant now desires to withdraw her suit, presumably to sue in England where the damages would be higher. *Held*, that the suit may be withdrawn on payment of costs. *The Titanic*, 225 Fed. 747 (C. C. A., 2d Circ.).

At common law a plaintiff may voluntarily dismiss his suit at any time before judgment; and his reasons for discontinuing are immaterial. *Banks* v. *Uhl*, 6 Neb. 145; *Petition of Butler*, 101 N. Y. 307, 4 N. E. 518. And merely that the plaintiff's claim has been resisted does not deprive him of his right to dismiss the action. *Wilborn* v. *Elemendorf*, 40 S. W. 1059 (Tex.); *McCabe* v. *Southern Ry. Co.*, 107 Fed. 213. But a dismissal will not be permitted when the defendant asks affirmative relief such as a set-off or counterclaim. *Grignon* v. *Black*, 76 Wis. 674, 45 N. W. 122; *Boyle* v. *Stallings*, 140 N. C. 524, 53 S. E. 346. *Contra*, *Huffstutler* v. *Louisville Packing Co.*, 154 Ala. 291, 45 So. 418. A petition in admiralty for the limitation of liability is like recoupment in that it makes no affirmative claim for damages, but seeks merely to reduce the amount for which the shipowner is liable. On the other hand, all other suits against the petitioner are temporarily enjoined and, if the petition is granted, the injunction is made perpetual. See BENEDICT, ADMIRALTY, §§ 525, 526. In this respect it resembles a cross bill in equity which is frequently held to prevent the plaintiff's dismissing the suit. *Tift* v. *Keaton*, 78 Ga. 235, 2 S. E. 690; *Pullman's Palace-Car Co.* v. *Central Transportation Co.*, 49 Fed. 261. *Contra*, *Waite* v. *Wingate*, 4 Wash. 324, 30 Pac. 81. Thus, if the petition is to be regarded as a mere defense to the claim for damages, with the perpetual injunction only an incident to this relief, the principal case can be supported; but if it is regarded as giving affirmative relief apart from resistance to the present action, the defendant was unjustly prejudiced by the permission given to the claimant to withdraw her suit.

APPEAL AND ERROR — INVITED ERROR — VERDICT WITHOUT EVIDENCE ON INSTRUCTIONS REQUESTED BY APPELLANT. — The defendant, on trial for murder, was convicted of manslaughter under an instruction requested by himself. The instruction was not justified by any evidence, though there was evidence capable of supporting a conviction of murder. *Held*, that he is entitled to a new trial. *Griggs* v. *State*, 86 S. E. 726 (Ga.).

Erroneous or inappropriate instructions cannot be objected to by the party that requested them. *Flowers* v. *Helm*, 29 Mo. 324; *Threlkeld* v. *State*, 128 Ga. 660, 58 S. E. 49. Instructions are meant to be acted on by juries: if that on which the jury ought to act is free from attack by the defendant, their action on it ought to be. Under the facts, the verdict of manslaughter can only have been an act of mercy by a jury who really believed defendant guilty of the higher crime; to allow an appeal on the ground that the jury was improperly kind to him at his request seems an unnecessary lenience. Their error was as much "invited error" as was the error of the court in instructing them. And it is a common holding that a verdict cannot be impeached in an appellate court as against evidence when the complaining party has failed to move to take the question from the jury. *McDonnell* v. *United States*, 133 Fed. 293; *Browning* v. *Dorton*, 143 Mo. App. 249, 128 S. W. 230; *Hopkins* v. *Clark*, 158 N. Y. 299, 53 N. E. 27. See *State* v. *Kiger*, 115 N. C. 746, 750, 20 S. E.

456, 457. In the outcome, defendant was sent back to his trial for murder, as could be done under prior Georgia holdings. *Brantley* v. *State*, 132 Ga. 573, 64 S. E. 676. In other jurisdictions he could be tried again only for manslaughter. *State* v. *Martin*, 30 Wis. 216; *State* v. *Dowling*, 84 N. Y. 478. See *Trono* v. *United States*, 199 U. S. 521; 19 HARV. L. REV. 300. In such a jurisdiction a ruling like that in the principal case would be very unfortunate indeed.

ASSIGNMENTS FOR CREDITORS — VALIDITY — ASSENT OF CREDITORS. — Pursuant to a resolution adopted by his creditors, the debtor executed and delivered a deed of assignment for the benefit of his creditors to the trustee selected by them. Before communication of the execution of the deed to any creditor, a judgment creditor who had not joined in the resolution levied on the property covered by the deed. *Held*, that as the deed passed no title to the trustee, the judgment creditor should succeed. *Ellis & Co.* v. *Cross*, 113 L. T. R. 503 (K. B.).

Under the view generally accepted in the United States, a deed of assignment for the benefit of creditors is enforceable upon execution and delivery, consent thereto on the part of creditors being either unnecessary or presumed. *Nicoll* v. *Mumford*, 4 Johns. Ch. (N. Y.) 522; *Hyde* v. *Olds*, 12 Oh. St. 591; *Tompkins* v. *Wheeler*, 16 Pet. (U. S.) 106. See 11 HARV. L. REV. 412; BURRILL, ASSIGNMENTS, 6 ed., § 257. In England and Massachusetts, however, the assent of creditors is required. In Massachusetts, the assignment is held a fraudulent conveyance until assented to, and is then validated to an amount equal to the aggregate claims of the creditors who assented. *Widgery* v. *Haskell*, 5 Mass. 144. In England, no title passes to the trustee unless one or more creditors subsequently assent to the deed. Until such assent the deed is treated as creating a revocable power given to the "trustee" to dispose of the property for the benefit of the debtor. *Garrard* v. *Lauderdale*, 3 Sim. 1. If the trustee is a creditor, however, it is said that he takes a power coupled with an interest which makes the agency irrevocable and the deed good. *Siggers* v. *Evans*, 5 El. & Bl. 367. In the principal case, it is submitted, that the assent given before the execution should be as good as assent after. An analogy is afforded in the law of sales of personal property where consent prior to an act of appropriation is just as good as assent after the act. WILLISTON, SALES, § 274. In Massachusetts this assent would have prevented the deed from being a fraudulent conveyance to the extent of the total claims of the assenting creditors. *Cf. Fall River Iron Works* v. *Croade*, 15 Pick. (Mass.) 11, 17. Even in England it has been held that a prior consent would at least have prevented any assenting creditor from treating the assignment as an act of bankruptcy. *Ex parte Stray*, L. R. 2 Ch. App. 374.

BILLS AND NOTES — DEFENSES — NEGLIGENCE OF MAKER — SIGNING IN BLANK. — The defendant handed his blank note to a friend to hold till further instructions were given. The next day he directed that it be destroyed or returned to him. The note was filled out and indorsed to the plaintiff, a holder in due course, who now sues. *Held*, that he may recover. *Hancock* v. *Empire Cotton Oil Co.*, 86 S. E. 434 (Ga.).

The maker of a complete instrument keeps it at his peril, and lack of delivery is no defense to a suit by a *bonâ fide* purchaser. *Shipley* v. *Carroll*, 45 Ill. 285. *Contra*, *Sheffer* v. *Fleischer*, 158 Mich. 270, 122 N. W. 543. But the maker of an incomplete instrument cannot be subjected to liability unless express or implied authority has been given for filling the blanks. *Baxendale* v. *Bennett*, 3 Q. B. D. 525; *Ledwich* v. *McKim*, 53 N. Y. 307; *Linick* v. *Nutting & Co.*, 140 App. Div. 265, 125 N. Y. Supp. 93. Though it is well settled that by delivering an incomplete instrument for negotiation the maker authorizes its completion and is liable to a holder in due course regardless of whether the au-